IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 09.03.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.1364 of 2000

The Management of
Asia Tobacco Company Limited,
35, Rajaji Nagar,
Hosur-635 126. ... Appellant/Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Vellore-5.
(Now Labour Court, Salem)

2.V.Ramesh ... Respondents/Respondents

Writ appeal filed under Clause 15 of the Letters patent against the order dated 04.07.2000 made in W.P.No.14486 of 1993. filed under Artcile 226 of the Constitution of India to issue a writ of Certiorari to call for the records in I.D. NO. 273 of 1992 on the files of the First respondent and to quash the award dated 21.04.1993 of the First Respondent Labour Court Vellore in ID NO. 273 of 1992 on the file.

For Appellant : Mr.Meenakshi Sundaram

For 2nd Respondent : Mr.Y.Jyothishchander for
M/s G.N.Mani Associates

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JUDGMENT

(Order of the Court was made by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 4.7.2000 made in W.P.No.14486 of 1993, in and by which, the learned single Judge confirmed the award of the Labour Court, Vellore.

2. The case of the management is briefly stated hereunder.
The second respondent, who is employed in the petitioner factory at Hosur as Machineman, on 13.12.1988, was found in possession of 7 cigarettes concealed in his front shirt pocket at the security gate, when he was proceeding after finishing his shift. By memo dated 13.12.1988, the second respondent was charge sheeted and was asked to submit his explanation within three days . He has submitted his explanation on 17.12.1988, wherein he admitted that on the said date, he had placed the cigarettes in his shirt pocket with intention to smoke the same and had absent-mindedly walked through the Security Gate and pleaded guilty to the charges. However, an enquiry was conducted and in the enquiry, the workman had participated and once again, he had admitted the charges. The Enquiry Officer has submitted his report holding against the workman. Based on the same, by an order dated 26.6.1989, the management dismissed the workman for the misconduct of theft of company's property effective from the date of his suspension. Thereafter, the second respondent sent a petition dated 08.07.1989 to the Deputy General Manager (Operations) stating that he was only a first offender and in view of his having admitted the charge, the punishment of dismissal would be a capital one and since there was no prior instance of stealing cigarettes and the present one being singular instance, requests the management to consider in mollifying the punishment. Since the said request was not acceptable, the second respondent has raised an issue under Section 2(A) of Industrial Disputes Act. Before the Labour Court, Exs.M1 to M12 were marked on the side of the management and no oral and documentary evidence was let in on the side of the workman. The Labour court, by an order dated 21.4.1993, after finding that the management failed to issue show cause notice before passing the order of dismissal and also considering the fact that the said occurrence was the first instance and also considering the family circumstances etc, modified the punishment into reinstatement without backwages. The said order of the Labour Court was challenged by the management

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in W.P.No.14486 of 1993. The learned single Judge, by an order dated 4.7.2000, confirmed the Award of the Labour Court and dismissed the writ petition. Aggrieved by the same, the management preferred the present writ appeal.

3. Learned counsel appearing for the appellant/management, by drawing our attention to the conclusion arrived at by the Labour Court, would contend that in the absence of specific finding regarding the enquiry and the ultimate decision of the management, the Labour Court is not justified in interfering with the punishment. According to him, the modification of the punishment viz., reinstatement without backwages in the place of dismissal, is not warranted.

4. On the other hand, the learned counsel appearing for the second respondent-workman submitted that in view of the flaw as pointed out by the Labour Court as well as the fact that the workman had no intention to commit theft of cigarettes and considering the family circumstances and inasmuch as the Labour Court exercised its judicial discretion, which was confirmed by the learned single Judge, there is no valid ground for interference by this Court.

5. We have carefully considered the relevant materials and order of the Labour Court, which was confirmed by the learned single Judge, as well as rival contentions.

6. Since the question relates to the Award of the Labour Court modifying the punishment, it is unnecessary to refer all the factual details. The charge relates to theft of cigarettes. It is not disputed that even the workman-second respondent herein admitted that he took cigarettes for smoking. However, by inadvertence, he brought the same in his shirt pocket while coming out of the factory after finishing his shift. As a matter of fact, even during the enquiry, the workman fairly stated that he had taken seven cigarettes only for the purpose of smoking. It is true that the conduct of the workman in taking the cigarettes is a justifiable one. At the same time, it is to be noted that the Labour court has concluded that after the finding of the Enquiry Officer, a decision was taken by the management to dismiss the workman from service. Further, he was not given show cause notice regarding the proposed punishment. It is also relevant to note that though the workman had absented for certain period for which he was warned, there is no material to show that on an earlier occasion, he has committed theft of cigarettes. In other words, there has been no prior instance of

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stealing cigarettes. It is also relevant to point out that he had not involved in stealing of cigarettes on prior occasion, which has not been disputed by the management and it is also evident from the factual conclusion of the Labour Court vide point No.1. In such circumstances, the Labour Court, taking note of past conduct of the workman and his family circumstances and also the stand taken by the workman himself from the beginning, took a lenient view and interfered with the Award of punishment.

7. In this regard, it is useful to refer the decision of the Apex Court reported in AIR 2005 SC 2006 (Bharat Coking Coal Ltd., Vs. Bihar Colliery Kamgar Union) wherein in paragraph 13, Their Lordships have held as follows:

> "It is well established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11(A) of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment."

Though in the said case, the Honourable Supreme Court confirmed the order of dismissal, it is clear from the said decision that it is the duty of the Labour Court, if it decides to interfere with such punishment, it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. It is also clear that under Section 11-A of the Industrial Disputes Act, 1947, the Labour Court has jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons.

8. In our case, we have already referred to the consistent stand taken by the workman. The materials placed show that there is no theft of cigarettes on an earlier occasion. Considering the family circumstances of the workman and other materials, the Labour court interfered with the punishment awarded and modified the same by ordering reinstatement without backwages.

9. On a perusal of the entire materials, we are satisfied that the Labour Court, for good and valid reasons, exercised its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 and modified the punishment. The learned single Judge had accepted the reasoning of the Labour Court and confirmed the same. We are also in agreement with the said decision taken by the

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Labour Court, which was confirmed by the learned single Judge. We do not find any valid ground for interference. Consequently, the writ appeal fails and the same is dismissed. No costs.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer,
Labour Court,
Vellore-5.
(Now Labour Court, Salem)

+ one cc to Mr. G.M. Mani Advocate sr no. 11639
+ one cc to Mr. Meenakshi Sundaram, Advocate sr no. 11665

VC(CO)
NM(23.03.2006)

W.A.No.1364 of 2000

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